IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7220 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SANTOSH RAMPRASAD BARAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7220 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 28/09/2004

ORAL JUDGEMENT

The detenu has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985

(hereinafter referred to as `the Act of 1985') by the order dated 11-12-2003 passed by the Police Commissioner, Surat City, he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. It is submitted by the learned counsel for the petitioner that the petitioner has been branded as bootlegger based on a solitary prohibition case registered with Kapodara Police Station being C.R.No.822 of 2003 on 25-10-2004 and impugned order of detention was passed on 11-12-2003. It is submitted that the petitioner has sent a written representation through advocate to the State authority on 27-4-2004. However, said representation was not decided and not communicated till date. In support of that, she has produced copy of representation along with slip issued by the postal department being Sr.No.4609. Same is ordered to be taken on record. In this connection, learned counsel for the petitioner has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

4. In the present case, no affidavit has been filed by the State authority. However, in para 11 of the

affidavit filed by the detaining authority, it has been stated that the representation dated 27-4-2004 has been received by him on 7-5-2004 and it was forwarded to the State Government on 13-5-2004. However, no satisfactory explanation has been putforward by the State authority by filing affidavit for not deciding the representation of the detenu and hence, the order of detention is illegal and the same cannot be sustained. Learned counsel for the petitioner has stated at the bar that the petitioner will not enter into the Surat Police Commissioner limits for a period of four months from the date of order passed by this Court. It has been held by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

In view of the above, the petitioner succeeds. Since the petitioner succeeds only on this ground, learned counsel for the petitioner did not press other points.

5. The petition is allowed. The impugned order of detention dated 11-12-2003 passed against the detenu Santosh Ramprasad Barai is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. The detenu shall remain outside the limits of Surat Police Commissioner for a period upto 31st January, 2005. Rule is made absolute accordingly. Direct service is permitted."

(R.P.DHOLAKIA,J.)

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